

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PNC BANK, NATIONAL ASSOCIATES : CIVIL ACTION
:
v. :
:
AMERUS LIFE INSURANCE COMPANY : NO. 05-02966-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 1, 2005

Plaintiff is the trustee of a trust, of which the corpus is a \$10 million life insurance policy issued by the defendant. Apparently, at some point in early 2004, defendant cancelled the policy for non-payment of premiums. Plaintiff contends that the accumulated cash-surrender value of the policy should have been used to defray any premiums due, and would have been sufficient to prevent cancellation of the policy. Plaintiff sought to establish, through discovery, that the defendant's records verified plaintiff's position. Dissatisfied with the discovery responses, plaintiff obtained an order from this court directing the defendant to provide "all documents relating to the cash value of the policy on the date of termination (and at various other specified dates." Defendant provided certain documents, but plaintiff contends that the responses are inadequate. Plaintiff seeks, in effect, a default judgment on liability.

Plaintiff's motion for sanctions will be denied. It is apparent that counsel for the parties did not adequately explore

the possible resolution of their discovery dispute without judicial intervention. More important, the record as a whole makes clear that the real problem is that neither counsel understands the records thus far produced by the defendant. These records are, indeed, far from self-explanatory, but they are represented to be the totality of pertinent records maintained by the defendant. The solution to the problem is not a discovery sanction, but obtaining an understanding of the true meaning of the records produced - either through deposing responsible personnel of the defendant, or (perhaps preferably) permitting a knowledgeable expert to review and explain the records which have been produced. Counsel are encouraged to pursue these avenues in a spirit of cooperation, rather than waste their client's money with unnecessary litigation.

An Order follows.

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AMERUS LIFE INSURANCE COMPANY	:	NO. 05-02966-JF

ORDER

AND NOW, this 1st day of November 2005, IT IS ORDERED:
That plaintiff's motion for sanctions is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.